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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1949

No. 402

JOSEPH DORSEY, MONROE DOWLING and CALVIN HARPER,

*Petitioners,*

vs.

STUYVESANT TOWN CORPORATION and METROPOLITAN LIFE INSURANCE COMPANY,

*Respondents.*

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

## MOTION AND CONSOLIDATED BRIEF FOR AMICI CURIAE

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*Respondents.*

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

## MOTION OF THE BOARD OF HOME MISSIONS OF THE CONGREGATIONAL AND CHRISTIAN CHURCHES AND OTHERS FOR LEAVE TO FILE A BRIEF AS AMICI CURIAE

*To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:*

The undersigned, as counsel for the undersigned religious, civic and welfare organizations, and on their behalf, respectfully moves this Court for leave to file the accompanying brief as amici curiae.

These organizations are religious, civic and welfare groups affirmatively concerned with the furthering of the democratic ideal in American life and they seek leave of the Court to file a brief in the above-entitled case in order

to express to the Court those principles of democracy which must guide the Court in its determination of the issue before it.

The Congregational Christian Churches of the United States, with approximately 1,100,000 members, and some 5,800 local churches, are on record through their representative national body known as the General Council as being opposed to racial segregation when in June of 1946 they adopted the following resolution:

> "We repent of the sin of racial segregation as practiced both within and outside our churches, and respond to the mandate of the Christian Gospel to promote with uncompromising word and purpose, the integration in our Christian churches and our democratic society of all persons of whatever race, color, or ancestry on the basis of equality and mutual respect in an inclusive fellowship.
>
> "We affirm as our own these words adopted by the Federal Council of Churches of Christ in America (meeting at Columbus, Ohio, March 5-7, 1946).
>
> "The Federal Council of Churches of Christ in America hereby renounces the pattern of segregation in race relations as unnecessary and undesirable and a violation of the Gospel of love and human brotherhood . . . As proof of their sincerity in this renunciation they will work for a non-segregated Church in a non-segregated society."

The Commission on Christian Social Relations of the Episcopal Diocese of New York, on November 9, 1948, at its regular meeting, voted unanimously to join with other organizations in filing a brief amici curiae in the above-entitled case to urge the Court to require the STUYVESANT TOWN CORPORATION and METROPOLITAN LIFE INSURANCE

COMPANY to cease their policy of excluding Negro applicants for tenancy.

The New York State CIO Council, the central body of CIO unions in New York State, represents in excess of one million organized workers in various industries and occupations within the State, the membership of which includes Negroes and other minority groups, all of whom together compose the vast bulk of the people within this State and Nation. The interest of the workers represented by these organizations in this suit is predicated upon their direct stake in the abolition of all forms of discrimination, religious, racial and political.

The Society for Ethical Culture in The City of New York, founded in 1876, is a non-sectarian, religious fellowship, based on faith in man, and as such, it is dedicated to the fulfillment of human personality regardless of race, creed or color, and the improvement of the quality of human relations between men.

United Neighborhood Houses is an association of settlement houses in New York City, which has as its purpose coordination of the efforts of the settlement houses to raise the living standards of the underprivileged in the city, regardless of race, creed, color or national origin.

The Social Action Committee of the Community Church of New York endeavors to promote true fellowship and brotherhood among men. Its efforts are directed toward an establishment of a righteous social order that knows not sect, class, nation or race.

Movants seek leave to file a brief amici curiae in order to present written argument on the moral and social im-

portance of the issue presented by the petition for certiorari, to wit:

Whether a tax exempt, urban redevelopment corporation which has received government aid for the purpose of eliminating slum areas and providing decent moderate rental housing may refuse to accept Negroes as tenants solely on the basis of race or color.

Counsel for the petitioners has consented to the filing of this brief. Counsel for the respondents have been requested to consent but have refused.

Dated, New York, November 14, 1949.

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The Council for Social Action of the Congregational Christian Churches of the United States of America,

New York City Congregational Church Association,

Committee on Inter-Group Relations of the New York Society for Ethical Culture,

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## CONSOLIDATED BRIEF FOR AMICI CURIAE

### *Statement*

This brief is presented by the undersigned religious, civic and welfare organizations as amici curiae on a petition for certiorari to the Court of Appeals of the State of New York to review a judgment affirming the judgment of the New York State Supreme Court dismissing the complaint whereby petitioners sought to restrain the respondents from denying to Negroes the opportunity to be admitted as tenants to the urban redevelopment project known as Stuyvesant Town. The full statement of the facts set forth in the petition for certiorari and brief in support thereof is so complete that we do not repeat it here.

### *The Issue*

The Court is asked to grant a writ of certiorari to review the question of whether a corporation created by the state for the express purpose of providing decent moderate rental housing in former slum areas, in behalf of which the city has exercised the power of eminent domain and to which the city has granted a tax exemption over a twenty-five year period, may, in the operation of such moderate rental housing, refuse to admit Negroes to tenancy solely on the basis of race and color.

## ARGUMENT

## POINT I

**The right to lease and occupy a home is a civil right protected by the Fourteenth Amendment.**

The Court has held that the liberty mentioned in the Fourteenth Amendment means "not only the right of the citizen to be free from the mere physical restraint of his person as by incarceration, but the term is deemed to embrace the right of the citizen . . . to live and work where he will." (*Allgeyer* v. *Louisiana,* 165 U. S. 579, 589.) The right to occupy a home was described by Mr. Justice Frankfurter as one of those "rights so basic to our society, that, after the Civil War, their protection against invasion by the states were safeguarded by the Constitution." (*Hurd* v. *Hodge,* 324 U. S. 24, Mr. Justice Frankfurter in concurring opinion.)

This civil right is as fundamental as freedom of speech, religion, press, and assembly. In fact, it is so well accepted that we usually take it for granted.

As the President's Committee on Civil Rights stated in its report, "To Secure These Rights":

> "Equality of opportunity to rent or buy a home should exist for every American" (p. 67).

The concept is not new or novel. In the congressional debates after the adoption of the Thirteenth Amendment, and preceding the enactment of the Civil Rights Act of 1866, it appears that Congress intended to protect this as well as other fundamental civil rights of the freedmen. Some doubts were expressed by the opponent of the Civil Rights Act as to its constitutionality, and particularly the right of Congress to confer citizenship upon the former slaves without an amendment,[1] but neither the proponents of the Civil Rights Act nor its opponents doubted that the citizens of the United States had an inherent right to occupy a home.[2]

After the enactment of the Fourteenth Amendment, Congress reenacted the Civil Rights Act with a few modifications, expressly stipulating therein:

> "Property rights of citizens.—All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property. (R. S. Sec. 1978.)"[3]

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[1] Flack, Adoption of the Fourteenth Amendment, Johns Hopkins Press, (1908) p. 21.

[2] See Debate between Senators Cowan and Trumbell, *Congressional Globe*, 39th Cong., 1st Session, Part I, pp. 499-500.

[3] Title 8, United States Code, 42.

During the debate on the Amendment and the Civil Rights Bill, one of the senators cited as an example of the oppression from which the freedmen must be protected the fact that in 1866, in Georgia, "If a black man sleeps in a house overnight, it is only by leave of a white man" and another asked, "Is a free man to be deprived of the right of . . . having a family, a wife, children, home?".

In 1879, the Court construed the Fourteenth Amendment as containing a positive immunity for the newly freed slaves against "legal discriminations . . . lessening the security of their enjoyment of the rights which others enjoy." (*Strauder* v. *West Virginia,* 100 U. S. 303, 308.)

The civil right of a Negro in New York State to occupy a home of his own choosing is protected against invasion by the State under the Fourteenth Amendment. This was recently reaffirmed in the decision of the Court in *Shelley* v. *Kraemer,* 334 U. S. 1, where court enforcement of a private race restrictive covenant was held to be prohibited state action, and unconstitutional.

The Court there stated:

> "It cannot be doubted that among the civil rights intended to be protected from discriminatory state action by the Fourteenth Amendment are the rights to acquire, enjoy, own, and dispose of property . . . It is likewise clear that restrictions on the right of occupancy of the sort sought to be created by the private agreements in these cases should not be squared with the requirements of the Fourteenth Amendment if imposed by state statute or legal ordinance."

The petitioners' brief presents all those aspects of state action, under the New York State Urban Redevelopment Law, which made possible the building of Stuyvesant Town, including the use of the power of condemnation by the City, the granting of a twenty-five year tax exemption of approximately $50,000,000 and the conveyance by the City to the respondents, without payment, of over seven acres formerly used as streets, and the continuing control by the City of the rentals to be charged, and the profits of the corporation. Such state participation in the creation of the housing project clearly clothed the operation of that project with the requirement of equality under the Fourteenth Amendment. (*Shelley* v. *Kraemer, supra; Buchanan* v. *Warley,* 245 U. S. 60; *Marsh* v. *Alabama,* 326 U. S. 501.)

The Thirteenth Amendment to the Constitution was adopted to abolish slavery; the Fourteenth and Fifteenth Amendments to abolish the badges of servitude which had remained in the treatment of the recently freed slaves. In 1872 the Court found that the one pervading purpose of the Amendments was ". . . the protection of the newly made freedmen and citizen from the oppressions of those who had formerly exercised unlimited dominion over him."[4]

That the determination of the rights of individual citizens in relation to facilities furnished by the state or with state aid is still made upon the basis of the race of the citizen, demonstrates how far we are today from the purposes of the Civil War Amendments.

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[4] Slaughter-House Cases, 16 Wall. 36, 71.

In granting the petition for ceritorari herein, the Court will once more be able to clarify the application of the Fourteenth Amendment to the rights of Negroes to housing, one of the basic necessities of life.

## POINT II

**Racial residential segregation is repugnant to the public policy of the United States.**

Public policy as a concept of law has been succinctly defined as ". . . The principle of law that no one can lawfully do that which has a tendency to be injurious to the public or against the public good."[1] It is a concept which can be applied to a particular subject as a rule, apart and of itself, capable of forming the independent basis of a decision.

We have taken the liberty of quoting at length a portion of a scholarly opinion rendered in the State of Ohio on this subject. The excerpt, as it appears here, has been adopted for their own by the courts of at least three other jurisdictions.

In *Pittsburgh, C., C. & St. L. Railway Co.* v. *Kinney*, 95 Ohio St. 64, 67, 115 N. E. 505, L. C. A. 1917 D 641, 643 (1916) Justice Wanamaker beginning at page 67, wrote:

> "What is the definition of 'public policy'? A correct definition, at once concise and comprehensive, of the words 'public policy' has not yet been formulated by our courts. Indeed the term is as difficult to define with accuracy as the word 'fraud' or the

[1] *Cahill* v. *Gilman*, 84 Misc. 372 (New York).

term 'public welfare'. In substance it may be said to be the community common sense and common conscience, extended and applied throughout the state to matters of public morals, public health, public safety, public welfare and the like. It is that general and well-settled public opinion relating to man's plain, palpable duty to his fellow men, having due regard to all the circumstances of each particular relation and situation.

"Sometimes such public policy is declared by constitution, sometimes by statute, sometimes by judicial decision. More often, however, it abides only in the customs and conventions of the people—in their clear consciousness and conviction of what is naturally and inherently just and right between man and man.

"It regards the primary principles of equity and justice and is sometimes expressed under the title of social and industrial justice, as it is conceived by our body politic.

"When a course of conduct is cruel or shocking to the average man's conception of justice, such course must be held to be obviously contrary to public policy, though such policy has never been written in the bond, whether it be constitution, statute or decree of court.

"It has frequently been said that such public policy is a composite of constitutional provisions, statutes and judicial decisions and some courts have gone so far as to hold that it is limited to these. The obvious fallacy of such a conclusion is quite apparent from the most superficial examination.

"When a contract is contrary to some provisions of the constitution, we say it is prohibited by the constitution, not by public policy. When a contract

> is contrary to statute, we say it is prohibited by a statute, not by public policy. When a contract is contrary to a settled line of judicial decisions, we say it is prohibited by the law of the land, but we do not say it is contrary to public policy. Public policy is the cornerstone—the foundation—of all constitutions, statutes and judicial decisions; and its latitude and longitude, its height and its depth, greater than any or all of them. If this be not true, whence came the first judicial decision on matters of public policy? There was no precedent for it, else it would not have been the first." (Accord: Snyder v. Ridge Hill Memorial Park, 61 Ohio App. 271, 288, 22 N. E. 2d 559 (1938), Adopted: Skutt v. City of Grand Rapids, 275 Michigan 258, 264, 266 N. W. 346 (1936); Girard Trust Co. v. Schmitz, 129 N. J. Eq. 444, 20 A. 2d 21 (1941).

That public policy is an independent doctrine of law finds further support in the well reasoned opinion in *Georgia Fruit Growers Exchange* v. *Turnipseed,* 9 Ala. App. 123, 62 So. 542 (1913) wherein the Court said at page 128:

> "Public policy, however, is broader than the mere terms of the Constitution and statutes and embraces their general purpose and spirit. Constitutions are born of the people, and statutes made (including the positive rules of common law adopted) in pursuance thereof emanate, of course, from legislative sources, all designated for the public good; but, where they are silent in terms and do not of their own force vitiate contracts detrimental to the public interest or welfare, as may be outlined in, and as is to be determined alone from, a general view of such constitution and statutes, the courts have supplied in

> a way the deficiencies of positive law by originating the doctrine of 'public policy' and so applying it as to hold void and decline to enforce executory contracts which though not violating the terms, yet violate the general spirit and policy of the law as expressed in the Constitution and statutes."

The concept was the basis of a decision in *Beasley* v. *Texas & Pacific Railway Co.*, 191 U. S. 492, where racial segregation was involved in the question of whether a railroad station should be built in a certain locale. In that case, the Court, in an opinion by Mr. Justice Holmes refused to enforce a contract on grounds of "public policy".

The principle of public policy is greater than the Constitution or any specific statute or decision on a particular aspect of a given subject, for it represents the aggregate, of which each statute or individual rule is but a component part.

We pride ourselves that our form of government and our political philosophy is the foremost exponent of a democratic society. The language in Section 125 of the New York Executive Law (1945) well describes the public policy of a democratic society.

> ". . . the legislature hereby finds and declares that practices of discrimination against any of its inhabitants because of race, creed, color or national origin are a matter of state concern, that such discrimination threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundations of a free democratic state."

This is forthright language without reservation or qualification. It is an exceptionally decisive overall con-

demnation of discrimination on the basis of race, creed, or color.

In determining the public policy of the United States on a subject as fundamental as housing and more particularly on racial discrimination in housing, not only the Constitution, the Thirteenth and Fourteenth Amendments and the Civil Rights Acts must be referred to, but in addition, the intent behind the enactment of these laws, the court decisions, and all pronouncements of the government on the subject must be considered.

In *Hirabayashi* v. *United States,* 320 U. S. 81, 100, the Court condemned racial discrimination stating:

> "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." (Citing *Yick Wo* v. *Hopkins,* 118 U. S. 356; *Yu Cong Eng* v. *Trinidad,* 271 U. S. 500; *Hill* v. *Texas,* 316 U. S. 400.)

In the restrictive covenant cases,[2] the Solicitor General of the United States presented a brief to this Court setting forth the executive declarations, treaties and other official statements which expressed the public policy of the United States on racial discrimination. Among those cited were the Civil Rights Acts,[3] executive orders of the late President Franklin D. Roosevelt, and the Charter of the United Nations (59 Stat. 1033) approved as a treaty, citing in par-

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[2] *Shelley* v. *Kraemer,* 334 U. S. 1; *McGhee* v. *Sipes,* 334 U. S. 1; *Hurd* v. *Hodge,* 334 U. S. 24 (1948).

[3] R. S. 1977 and 1978, 8 U. S. C. 41 and 42 and R. S. 1078, 28 U. S. C. 292; R. S. 2302, 43 U. S. C. 184; R. S. 2004, 8 U. S. C. 31.

ticular Article 55 of the Charter, wherein the United Nations agreed to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion" (59 Stat. 1045-6).

All of these declared the public policy of the United States to be opposed to racial discrimination in housing.

In *Hurd* v. *Hodge, supra,* the Court emphasized the importance of considering the public policy of the United States in dealing with racial discrimination. Among the reasons the Court gave for invalidating enforcement of racial restrictive covenants was that it was against public policy. The Court cited Section 1978 of the Revised Statutes, derived from Section 1 of the Civil Rights Act of 1866, providing:

> "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."[4]

The Court held further that the public policy of the United States is manifested in the Constitution, treaties, Federal statutes, and applicable legal precedents (citing *Muschany* v. *United States,* 324 U. S. 49, 66).

The action of the respondents in preventing Negroes from occupancy in Stuyvesant Town, an urban redevelopment housing project, solely on the basis of color and race, denies to Negroes a fundamental civil right and is opposed to the public policy of the United States.

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[4] 8 U. S. C. Sec. 42.

## POINT III

**The destruction of human and economic values which results from racial residential segregation makes this form of discrimination particularly repugnant.**

**A. Residential segregation has created a pattern of unprecedented overcrowding and congestion in the housing of Negroes in New York and an appalling deterioration of their dwelling conditions. The extension and aggravation of slum conditions have in turn resulted in a serious rise in disease, crime, vice and racial tension.**

On the erroneous assumption that there is a detriment to real property values when there is renting to Negroes and through the inertia of continuing the established social pattern of residential segregation, Negroes have been barred from most residential areas, thus limiting, far more than one might realize, the space and housing facilities in which these Americans may live.

The extent of the overcrowding created by residential segregation can be properly evaluated only if it is viewed against the background of rapid urbanization of the Negro population—a process which began to gather momentum with the "Great Migration" of World War I. In New York City, for example, the interval between 1910 and 1930 saw 235,997 Negroes pour into a city which previously had less than 91,709—an increase of more than 300 per cent in twenty years.[1] This accelerated trend has continued ever since. In the following decade, between 1930 and 1940, while the total population increase in New York was only 7.6 per cent, a parallel increase in the Negro popula-

[1] Kahen, Validity of Anti-Negro Restrictive Covenants: A Reconsideration of the Problem, 12 U. of Chicago L. Rev. 202.

tion was 38.9 per cent.[2] This pattern is by no means peculiar to New York City, but is typical of a large urban area of the State of New York and of the entire North.[3]

As the Negro migration into New York City and the other cities of the state continued, limited areas of living became more and more overcrowded.

The supply of shelter diminished as the colored population grew. The Real Estate Reporter and Building News of October, 1945 reported that:

> "In West Harlem (according to the Mayor's Committee on City Planning), a section making up one-sixteenth of the total of Manhattan's area, more than one-tenth of the Borough's total population is housed. On one Harlem city block there is a population of 3,871—reported the highest dwelling-density in the entire world.'"[4]

While individuals in most migrant groups found escape from the slum and blighted areas as they improved their economic and cultural status,[5] the degree of concentration of Negroes has increased with the passing of time.[6]

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[2] U. S. Bureau of Census, Censuses of 1930 and 1940.

[3] Bureau of Census, Negroes in the United States, 1920-1932, 1935, Table 10, Page 55.

[4] The Urban Negro: Focus of the Housing Crisis, Real Estate Reporter and Building News, October, 1945, p. 12.

[5] The President's Conference on Home Building and House Ownership, Report of Committee on Negro Housing, Negro Housing, 1932, p. 5; Burgess, Residential Segregation in American Cities, Annals of the American Academy of Social and Political Science, November, 1928, pp. 108-12; Cressey, The Succession of Cultural Groups in the City of Chicago, University of Chicago, 1930 (A Ph. D. thesis in the Development of Sociology, pp. 58-9; 84-94, tables VI, VIII and X).

[6] Cressey, op. cit., p. 94, table XI.

Spatial separation of ethnic groups, which was temporary for European immigrants and native white migrants, became permanent for colored Americans. For the latter group this separation was no longer occasioned by economic forces alone. Residential segregation is not a voluntary matter for Negroes; it is enforced. A new and distinctly American ghetto has developed.

In this situation, only two things can possibly happen. Either Harlem in New York City and the smaller colored residential islands in the city could attempt to absorb more inhabitants or the areas available to Negroes could expand. The prevailing mores of residential segration has prevented the possibilities of expansion and free movement of Negro families, regardless of their income or cultural level, thereby intensifying the overcrowding of already densely populated Negro ghettos. This has resulted in an alarming decline in the living standards of a large segment of our population.

### 1. *Overcrowding*

The accepted standard by which the housing experts measure overcrowding in dwellings is the relationship between the number of persons and the number of rooms, and a dwelling is regarded as overcrowded when there are fewer rooms than there are persons to live in them.[7]

Measured by this definition a preponderence of all housing occupied by Negroes in New York City is overcrowded.

The immediate effect of enforced racial segregation is abundantly clear from the statistical evidence. Because

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[7] Wood, Introduction to Housing, U. S. H. A. Washington, 1939, p. 36.

Negroes have been unable to exercise their civil right to move freely to new living quarters, the black ghettos have become increasingly and dangerously overcrowded.

### 2. *Conditions of Dwellings*

It is a corollary of overcrowded housing that the conditions of living inevitably fall far below the standards of safety and health which every citizen has reason to expect. The continuous process by which thousands of new Negro migrants arrive annually in the *Harlems* of the cities of New York State results in a perpetual deterioration in the living conditions of these people. The impact upon the Negro has been disproportionately severe. He pays higher rentals for inferior dwellings[8]—inferior to the point of endangering the lives and well-being of himself and his children. Because of the discrimination practiced in housing only a small portion of the total housing supply is open to the Negro and the opportunity of improving his status with respect to the barest necessities of living, is cut off in deference to private prejudices and a reluctance on the part of a decreasingly small group of people to change the pattern of segregation.

Viewing the condition of dwellings upon a nation-wide basis, it will be seen from the 1940 Census that 83% of the dwellings occupied by Negroes were in need of major repairs or contained plumbing deficiencies. The comparable figure for white dwellings was 45%. Twenty-six per cent of the dwellings occupied by non-whites which needed major repairs were without running water (9.2 was

[8] Robinson, Relation Between Condition of Dwellings and Rentals, by Race, Journal of Land and Public Utility Economics, August, 1946, pp. 299-302.

the ratio in white dwellings). In those non-white dwellings which did not require major repairs, 35.5 per cent were without running water as compared to 17.4 per cent of the white dwellings. While 59% of all dwelling units occupied by whites had private baths and toilets, these necessities were found in only 20.5 per cent of non-white dwellings.

A recent study of sixteen northern and western cities revealed that while only 16.5 per cent of the white units were substandard (i. e., needing major repairs or with plumbing deficiencies), 44.9 per cent of the non-white units were deemed to be substandard.[9]

### 3. *The Results of Slum Conditions in Negro Housing*

The needs of Negroes have not been met by new housing since access to a large proportion of this housing is denied to them. The supply of available shelter has never caught up with the demand. The poorly housed have become more poorly housed. The *Harlem* in every city has become a slum—the ultimate in the degeneration of the American dwelling place.

The results of these conditions in terms of public welfare and community life are amply documented by public record. This Court may take notice of the higher incidence of disease, crime, vice, and violence in unhealthy and deplorable living areas. It is here proposed to set out in summary form some of the observations and conclusions of experts in these special social fields with particular reference to the conditions existing in the Negro ghetto.

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[9] Robinson, Relation Between Condition of Dwellings and Rentals by Race, The Journal of Land and Public Utility Economics, Volume XXII, No. 3, October, 1946, p. 297.

The chain of causation is apparent. These are the effects of racial residential segregation.

#### 4. *The Effect of Residential Segregation on Health*

It has been demonstrated above that residential segregation inevitably forces the segregated group into blighted and overcrowded areas. These conditions in themselves create a serious health hazard regardless of the economic status of the segregated group. Authorities in the field of public health and public housing are agreed that bad housing has a direct and disastrous result upon health.[10]

Frequent contact of large numbers of individuals in a restricted area cause significant increases in respiratory diseases. This is demonstrated by the high mortality rates resulting from tuberculosis, pneumonia, influenza and the common communicable diseases of childhood in overcrowded areas.[11]

Typhoid fever is 100% more frequent in slums; indigestion and stomach ailments 75% more frequent; enteritis and colitis 40% higher. These relationships hold even if the economic factors are taken into account.[12] As shown in a study made by the respondent Metropolitan these conditions also resulted in a high incidence of rheumatic

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[10] Smillie, Preventive Medicine and Public Health, The MacMillan Company, New York (1946); Basic Principles of Healthful Housing, Committee on Hygiene of Housing of the American Public Health Association; Winslow, Housing for Health, The Milbank Foundation (1941).

[11] Britton, New Light on the Relation of Housing to Health, 32 American Journal of Public Health 193 (1942).

[12] Britton and Altman, Illness and Accidents Among Persons Living Under Different Housing Conditions, 56 Public Health Reports 609 (1941).

fever, the most common cause of heart disease among individuals under 45.[13]

The infant mortality rate is the most senstitive single index of health and progress. If such an index of social conscience and progress is applied to the Negro people, it is seen that they are excluded from the benefits of the American way of life.

> "City-born babies, and those born in the towns, have a slight edge on babies born in the country, in their chance for survival. That comparison holds true *only for white children* however; in the non-white group, which is mostly Negro, those born in the rural areas have a better chance than those in urban areas, though still not anywhere near as good a chance as the white child in either city or country. The reason may be that the conditions under which Negroes must live in the cities and towns represent a hazard for babies that outweigh other factors, such as more and better medical care and access to hospitals, that tend to give the city born child the advantage."[14]

This answer is given grim reality by the tragic pattern of Negro infant mortality rates which are 65% higher than for white babies in all areas of the United States.[15] In New York City with the most progressive health department in the country, the Negro mortality rate is 50% higher than that for the white race.[16]

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[13] Paul, The Epidemeology of Rheumatic Fever and Some of Its Public Health Aspects, Metropolitan Life Insurance Co., 1943.

[14] Federal Security Agency, U. S. Children's Bureau, Our Nation's Children, No. 8, August, 1947.

[15] Gover, Negro Mortality; The Birth Rate and Infant and Maternal Mortalities, 61 Public Health Reports 43 (1946).

[16] Vital Statistics, New York City Health Department, 1946.

Despite the increased use of hospitals for child birth throughout the cities of the United States, two to three times as many Negro mothers die in child birth as white mothers.[17]

In terms of citizenship, the psychological evils flowing from segregated housing are equally as important to society as the physical health hazards discussed above. Draft rejection rates in the Second World War for personality disorders increased significantly in slum and overcrowded areas.[18] Furthermore, Negro draftees had the highest rates for both psychoneurosis and psychopathy among national and ethnic groups, a factor explained in the studies as related to "the intensity and severity of stress to which many of the Negroes are subjected."[19]

> "The most all-pervading sense of frustration that literally engulfs the Negro people in their caste relationship to the majority group and the mechanisms of segregation and discrimination that are its attendant counterparts. . . . Caste is meant to refer to systems of privilege and the limiting of spontaneous participation in the culture of which the Negro people are a part.
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> "The typical American town has its black ghetto—almost always situated on the other side of the track. It is difficult to stay there and more difficult

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[17] Gover, op. cit.

[18] A study of Washington, D.C., draft rejection rates is found in Hadley, et al. Medical Psychiatry; an Ecological Note, VII Psychiatry 379 (1944) and a study of Boston and surrounding areas is found in Hyde & Kingley, Studies in Medical Sociology: The Relation of Mental Disorders to Population Density, 77 N. E. Journal of Medicine 571 (1944).

[19] Hyde & Chisholm, Relation of Mental Disorders to Race and Nationality, 77 N. E. Journal of Medicine 612 (1944).

> to leave. Overcrowding and congestion become commonplace. Individual privacy and respect for it disappears."[20]

In a study of mental disorders in urban areas it was demonstrated that social communication between population groups was essential to healthy mental development, and that social isolation of a given group led to increased mental breakdown among its members.[21]

> "Bad housing, with its resultant overcrowding, filth, lack of personal and family privacy, its noises, its odors and its dark and dirty corners, breaks down family morale and has a profound and evil influence upon the happiness, welfare and health of the people."[22]

In human terms, substandard housing means serious interference with the emotional, mental and family life of the individual:

> "The Committee on the Hygiene of Housing has correctly pointed out that more damage is done to the health of the children of the United States by a sense of chronic inferiority due to the consciousness of living in substandard dwellings than by all the defective plumbing which those dwellings may contain."[23]

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[20] Cooper, The Frustration of Being a Member of a Minority Group, 29 Mental Hygiene 189 (1945).

[21] Farris & Dunham, Mental Disorders in Urban Areas: An Ecological Study of Schizophrenia and Other Psychoses, University of Chicago Press, 1939.

[22] Smillie, op. cit.

[23] Winslow, Housing for Health, The Milbank Foundation, (1941).

**B. There are no economic justifications for residential segregation of Negroes. Real property is not destroyed or depreciated by reason of Negro occupancy and large segments of the Negro population can afford to live in areas from which they are barred.**

**1. *The effect of Negro occupancy upon real property.***

This is the conclusion of one analyst:

> "Already there is a body of evidence which indicates that Negroes with steady incomes who are given the opportunity to live in new and decent homes . . . instead of displaying any 'natural' characteristics to destroy better property have, if anything, reacted better towards these new environments than any other groups of similar income. Colored tenants have also displayed desirable rent-paying habits when housed in structures designed to meet their rent-paying ability. For 155 projects in 59 cities having two or more FPHA-aided projects, at least one of which is occupied by Negro tenants, the following results are reported: Collection losses do not exceed one per cent of the total operating incomes for a total of 142 of these projects, 72 of which are occupied by Negroes and 70 by white or other tenants. Five of the 13 projects showing rental losses in excess of one per cent are tenanted by Negroes and 8 are tenanted by whites or others. The collection loss records between the two racial groups do not differ more than one per cent in 51 of the 59 cities, and the records are identical in 34."[24]

The National Association of Real Estate Boards recently undertook a survey of Negro housing and found that

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[24] Weaver, Race Restrictive Housing Covenants, The Journal of Land and Public Utility Economics, Vol. XX, No. 3, August, 1944, p. 189.

"provision for good housing for Negroes can be carried out as a sound business operation and that the Negro family that rents good housing is usually a good economic risk."[25] Three-fourths of the local Boards which participated in the latter survey found no reason why large insurance companies should not freely purchase mortgages upon housing occupied by Negroes.[26]

This same survey asked if Negroes were good economic risks and if Negroes did depreciate property. The answers can be summarized as follows:

(1) Does the Negro make a good home buyer and carry through his purchase to completion? . . . 17 of 18 cities reported YES

(2) Does he take as good care of property as other tenants of comparable status? . . . 11 of the 18 cities reported YES

(3) Do you know of any reason why insurance companies should not purchase mortgages on property occupied by Negroes? . . . 14 of the 18 cities reported NO.

(4) Do you think there is a good opportunity for realtors in the Negro housing field in your city? . . . 12 of the 18 cities reported YES.[27]

In Washington, D. C., a small number of colored families moved about 50 years ago into Brookland, a desirable suburban section of the City. Most of them were Gov-

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[25] Press Release No. 78, National Association of Real Estate Boards, November 15, 1944.

[26] Ibid.

[27] Ibid.

ernment employees and had stable incomes. Just prior to the recent war, many new homes were built in the area by Negroes at a cost of from $7,500 to $25,000. These houses are better designed and constructed than most of the existing dwellings in the neighborhood and their occupants are of a higher educational and cultural level than the majority of their white neighbors. The property values in Brookland have increased not only in the Negro community, but also in the contiguous white areas.[28]

Another such model community can be found in middle-class Westchester County, New York.[29] New York City also contains persuasive evidence that the color of the skin of the tenants is not the determining factor in the rise of standard of dwelling conditions:

> "Closest approach to satisfactory housing for Negroes in New York's five boroughs, according to William L. Carson, a realtor with long experience in the area, is the Williamsbridge section in the Bronx. Most wage earners, here, have incomes of $3,000-$4,000 per annum, most are Civil Service employees, many own their own homes, although some are rental tenants. Although seriously affected by the housing shortage, the Williamsbridge community has uniformly higher standards of dwelling conditions than are to be found in overall surveys of the other colored centers. The result is a total absence of hoodlumism, buildings kept in good condition, no evidence of slums (present or future) and a general

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[28] Weaver, Race Restrictive Housing Covenants, The Journal of Land and Public Utility Economics, Vol. XX, No. 3, Aug., 1944, p. 191.

[29] Mummy and Phillips, Negroes as Neighbors, Common Sense, April, 1944, p. 134.

standard of living not much below that of average white families of comparable income."[30]

A similar comparison was made recently in Philadelphia where a section recently entered by colored people was selected for study and the selling prices before and after Negro occupancy were computed in a single block. The conclusion, as reported in an article entitled, "Colored Occupancy Raises Values", was as follows:

> "The average sales price for the standard property in average condition, before colored occupancy was between $2,800 and $3,200. Today (September 1945) about six months after the first colored occupancy purchases, the average value for the same property is $4,500 to $5,000, with exceptional houses selling up to $5,500 and $6,000.[31]
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> "If we trace the development of the newer colored neighborhoods, we will find that as a new section opens up close to the suburban section, the better-educated and higher-income group colored move there from a less desirable section . . . Thus, there is a gradual stepping up and development of the newer colored sections. This has all led to the increase in value in these sections and has stabilized all of these neighborhoods. As the process of colored expansion proceeds, the stepping-up process will continue to increase values in these newly developed colored sections."[32]

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[30] The Urban Negro: Focus of the Housing Crisis, Real Estate Reporter, November, 1945, p. 11.

[31] Beehler, Color Occupancy Raises Values, The Review of the Society of Residential Appraisers, Sept., 1945, p. 4.

[32] Ibid., p. 6.

The origin of the fallacy that the presence of Negroes creates a decline in property values has its historical roots in the fact that Negroes are traditionally relegated to already deteriorated neighborhoods or live under such conditions of overcrowding (due to restrictions) as to occasion physical decay of property. Most of Harlem was built around 1900 and an appreciable part of it in the last century.

The Philadelphia Chapter of the Society of Residential Appraisers and the Wharton School of Finance conducted a joint survey in 1939 and found *no* houses occupied by Negroes in Philadelphia could be classified as being in a good residential neighborhood:

> "By the time colored occupancy spreads to any neighborhood it is at least 30 years old and has the characteristics of physical and functional obsolescence that remove it from the category of a good neighborhood."[33]

Although it is often assumed because a particular neighborhood once housed the rich, that it was a first-class residential community when it was taken over by colored people, the evidence reveals, however, that in most instances the area had already been deserted by its original inhabitants and had started on the road to deterioration long before Negroes entered.

One other objective factor in value depreciation has been noted by economists. Our building industry has generally deemed it expedient to concentrate on the upper-income group. Since there are not as many families in

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[33] Stern, Long Range Effect Colored Occupancy, The Review of the Society of Residential Appraisers, January 1945, p. 5.

this group as in the middle and lower-income groups, "the oversupply of houses (in terms of capacity to pay, not in terms of need), must be absorbed by families whose income is lower than the income of families for whom houses were designed. This means a sizeable depreciation in value must take place."[34]

Available and valid data are cumulative confirmation of the proposition that when economic factors are kept constant, there are no noticeable differences in the quality of property maintenance, conditions of occupancy, and neighborhood standards on property values which can be directly traced to race.[35]

**2. *The ability of Negroes to pay for better housing.***

It is also frequently asserted in support of racial segregation that few, if any, Negroes can afford to pay for decent housing. It is argued that the Negro who can afford to move out of Harlem is so exceptional that a change in existing procedures is not indicated.

This contention also fails to meet the test of analysis. In the first place, it should be noted that Negroes pay

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[34] Newcomb and Kyle, The Housing Crisis in a Free Economy, Law and Contemporary Problems, Winter, 1947, p. 191. With respect to Harlem in New York City, see Kiser, Sea Island to City, Columbia University Press (1932), pp. 19-21.

[35] This is supported by the experience of the public housing program, the few desirable areas occupied by Negroes in cities such as Washington, Philadelphia, and New York and in the small number of well designed medium-rental housing projects available to Negroes—such as the Paul Lawrence Dunbar Apartments in New York City and the Michigan Boulevard Garden Apartments in Chicago.

much higher rentals for the quarters which they currently occupy than do white persons in comparable units.[36]

Moreover, Negroes spend a larger proportion of their income for rent than white persons in the same income group. These facts are brought into sharp relief by the result of a study of housing in Chicago:

> "Negro residents of the Chicago 'black belt' pay as much per cubic foot per room as that paid by wealthy residents for equivalent space on Lakeside Drive."[37]

Whatever may have been the differential in earnings between Negroes and whites in the lower and middle income groups prior to World War II, the industrial effort in connection with the war tended to eradicate such differential. New and better paying jobs were open to Negroes, both men and women, and earnings in all job classifications were increased.[38] Consequently, great numbers of Negro workers and many Negro professional and business men and women who are dependent upon the Negro community, as well as those Negroes who recently have secured white collar and professional jobs in the larger economy are now able to pay for decent housing. Consequently the number of potential Negro tenants of decent housing is greater than formerly.

Graphic statistics are available to demonstrate that Negroes in New York City have a demand as well as the

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[36] Moron, Where Shall They Live? The American City, April, 1942.

[37] Cayton, Negro Housing in Chicago, Social Action, April 15, 1940, p. 18.

[38] Weaver, Negro Labor: A National Problem, pp. 78-93, 112-130.

ability to pay for more and better housing. Certainly, these statistics do not support the proposition that the inhabitants of Harlem are, of necessity, required to remain in substandard housing for lack of economic means.

> "When the Riverton project was opened in Harlem in July, 1947, there were 20,000 applicants (mostly Negro) for its 1,232 units. Rents averaged $14 a room, with a minimum of $44 a month for a one-bedroom unit."[39]

At the end of the war, income distribution among colored American citizens in the northern urban centers more clearly approximated that obtaining for the entire population than ever before. The number and proportion of Negroes well above the subsistence level had increased greatly. Racial residential segregation cannot be justified on the grounds of inability to pay:

> "The peculiar intensity of the housing problems of Negroes is not due to their disproportionately low incomes alone. The really distinctive factor underlying these problems stems from the fact that, among the basic consumer goods, only for housing are Negroes traditionally excluded from freely competing in the open market. Consequently, not only do the majority of Negroes live in low-rent substandard housing, but even when colored families can afford rents which normally assure decent shelter, they are often denied it."[40]

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[39] Weaver, The Negro Ghetto, Harcourt, Brace & Company (1948) p. 130.

[40] Weaver, Chicago: A City of Covenants, Crisis, March, 1946, p. 76.

There is no validity to the assumption that racial residential segregation can be justified in terms of the economics of residential real estate. Negro occupancy does not in itself destroy or depreciate the property. Large numbers of Negroes can afford to enter the free housing market. The only significant economic fact which the available data confirm is that traditionally Negroes have been forced to pay a larger portion of their income and a larger absolute price for smaller value and for substandard dwelling. Racial prejudice and the desire to profit by it are at the root of all segregation.

Thus, Negroes are able to pay for better housing in large numbers, but the wall of residential segregation that surrounds their areas of concentration and excludes them from most newly constructed housing prevent their securing it. This is no temporary phenomenon of a general housing shortage. It is an historic fact and will persist as long as the evil of residential segregation remains.

## CONCLUSION

In addition to the firm legal basis upon which the petitioners' stand, there are compelling moral reasons which require that this Court should grant the petition for a writ of certiorari and reverse the judgment below.

We are living in an age in which democracy must grow and expand if it is to live. The action of Stuyvesant Town in accepting extraordinary governmental aids and converting them to the use solely of white residents of New York

City can only undermine those principles of democracy and equality of man upon which our government is founded.

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